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***STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JANUARY 27, 2015***

Mr. Chairman and Members of the Committee:

Thank you for inviting the DAV (Disabled American Veterans) to testify at this legislative hearing of the House Veterans' Affairs Committee. As you know, DAV is a non-profit veterans service organization comprised of 1.2 million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

DAV is pleased to be here today to present our views on the bills under consideration by the Committee.

H.R. 189

H.R. 189, the Servicemember Foreclosure Protections Extension Act of 2015, introduced by Representative Grayson, would extend foreclosure and eviction protections for service members.

DAV has no resolution from our membership concerning this issue; thus, we take no formal position on this matter.

H.R. 216

H.R. 216, the Department of Veterans Affairs Budget Planning Reform Act of 2015, introduced by Ranking Member Brown, would direct the Secretary of Veterans Affairs to submit to Congress a Future-Years Veterans Program and a quadrennial veterans review, to establish in the VA a Chief Strategy Officer. H.R. 216 would establish new planning and budgeting processes, as well as study and make organizational changes affecting VA's ability to develop and implement budgets and strategic plans. The legislation would establish five new processes to accomplish these purposes.

First, the bill, beginning in 2019, would require VA to conduct a Quadrennial Veterans Review (QVR) every four years, modeled after the Quadrennial Defense Review (QDR) and

Quadrennial Homeland Security Review (QHSR) currently required by law. The QVR would study and report a strategy for meeting the nation's commitment to veterans and the resources required to meet that commitment. The QVR is intended to be a futures-based look at opportunities, challenges, policies and strategies related to meeting veterans' needs. The report would also examine the priorities for veterans programs and assess the effectiveness of VA's organizational structure.

The bill requires that VA conduct its review in consultation with other federal agencies, as well as a wide range of stakeholders, "including State, local, and tribal government officials, members of Congress, veterans service organizations, private sector representatives, academics, and other policy experts."

Second, the bill would require VA to develop and submit annually a Future-Years Veterans Program (FYVP), which is modeled after the Future-Years Defense Program (FYDP) and the Future-Years Homeland Security Program (FYHSP). The FYVP would lay out a five-year plan for meeting the nation's commitment to veterans as well as delineate the resources necessary to meet that commitment. The FYVP would include five-year estimates of the budget and appropriations levels on a program element basis in order to ensure that resources properly align with outcome-based plans and programs. The FYVP would be submitted concurrent with VA's annual budget submission and the bill would require that it be consistent with funding requests contained in the Administration's budget submission. The bill would also require that the FYVP be coordinated with the QVR, which serves as the foundation for developing the FYVP's five-year plans.

Third, the bill would require the Secretary to annually provide certain policy guidance to VA planning, programming and budgeting officials throughout VA responsible for developing individual program budget recommendations. The policy guidance from the Secretary would be required to be based on the most recent QVR and FYVP, as well as estimates of the "resource levels projected to be available" in future years.

Fourth, the bill would create the position of Chief Strategy Officer (CSO) to be filled by the Assistant Secretary for Policy and Planning, or if there is a subsequent reorganization, the Assistant Secretary responsible for agency planning. The CSO would have broad responsibilities for overseeing the planning, programming, budgeting and execution functions Department-wide, to include health care, benefit and cemetery programs. The CSO would have significant independent authority, reporting only to the Secretary. The CSO's responsibilities for budgeting would be on the same level as VA's Chief Financial Officer (CFO), a role designated for the Assistant Secretary for Management. The CSO would be chiefly responsible for managing the new QVR, FYVP and policy guidance requirements contained in this bill.

Fifth, the bill would require VA to undertake a comprehensive one-year study of the organizational structure of the Secretary's office and the Department as a whole. In addition, the bill would require that an independent contractor conduct a parallel study of the organizational structure of the Secretary's office and of the Department. The independent study would be included within the report submitted by the Secretary to Congress.

H.R. 216 has a number of intended purposes, which would include the following:

- To strengthen VA's capacity to plan for near- and long-term future needs of veterans;
- To ensure that strategic planning is future-looking and outcome-based;
- To create a more unified planning, programming, budgeting and execution process;
- To better align VA's plans with their resource requests; and
- To increase the transparency of VA's planning and budgeting processes.

Over the past year, in which a VA health care scheduling scandal led to a VA health care access crisis, it has become apparent that the connection between VA's needs and VA's resources to meet those needs do not align properly. For years, DAV and our partners in *The Independent Budget* have pointed out such mismatches in funding for VA medical care, construction, claims processing and many other VA programs and benefits. The proposed legislation could help to address this problem by adding more transparency and rigor to VA's budget and planning process. DAV generally supports this legislation, although we do have a few concerns that we would like to see addressed during the legislative process.

First, although the QDR and QHR are readily available online, and we would assume that the QVR would be equally accessible, it does not appear that the FYDP or the FYHSP are similarly available. Although it is understandable that both DOD and DHS would keep classified programs' budgeting and planning information shielded from public view, there appears to be no part of their Future-Years Programs that is publicly available for review, even for their many unclassified programs and budgets. As such, we recommended last year that the legislation be amended to require that both the QVR and the FYVP be made publicly available at the same time they are delivered to Congress.

We also have concerns about the role of the Office of Management and Budget (OMB) in this new planning and budgeting process. Since the bill requires that the Administration's budget be "consistent" with the FYVP budget estimates, would OMB have a direct or indirect ability to revise or constrain the budget and appropriations levels contained in the FYVP? In setting out "policy guidance" to the individual program offices, the Secretary is required to inform them of "resource levels projected to be available" as they make their budget estimates; would these levels come directly or indirectly from OMB?

In addition, we have concerns about the creation of a new CSO inside VA. The language of the bill would give the CSO significant independence in overseeing all planning and programming throughout VA, including that done within the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA) and the National Cemetery Administration (NCA). Would the CSO have overlapping authority with the Under Secretaries of these administrations? In preparation of the budget, the CSO also would play a significant role and possess final approving authority according to the bill's language. How would the CSO and the CFO interact during preparation of VA's budget; are they co-equal and how would disagreements between them be settled? Would this lead to greater harmony or conflict within VA's budget formulation process?

Finally, we have concerns about the role veterans service organizations would play in the development of the QVR. The bill would require VA to consult with a wide range of stakeholders, both governmental and nongovernmental. As organizations that have not only great interest in veterans' policies, but great experience and expertise in dealing with them, we have concerns about whether this broad consultation process would dilute our input. While there is always a role for outside perspectives to ensure fresh thinking within public agencies, VSOs are not idle stakeholders; collectively we provide direct assistance to VA and veterans in many areas, and particularly in representing veterans in their claims for benefits and services. We all have service officers who work inside VA facilities and behind information technology (IT) firewalls, playing an integral role in the claims processing system and serving veterans as attorneys-in-fact. We are concerned about the bill's potential of diminishing our influence and putting us on par with less interested, involved or informed stakeholders during the consultation process.

We look forward to working with the Committee to address these concerns in order to fully support this legislation.

H.R. 245

H.R. 245, introduced by Representative Ralph Abraham, would codify certain existing provisions of law relating to effective dates for claims under the laws administered by the Secretary of Veterans Affairs. H.R. 245 has two major provisions; the first would re-establish certain safeguards for claimants who currently file informal claims in order to protect their effective dates. Under a VA rule that is set to take effect in March, claimants will no longer be able to file informal claims; instead, the rule establishes a new "Intent to File a Claim" procedure and requires that claimants must file both an "Intent to File a Claim," as well as the actual claim itself only on standardized written forms, online or through VA's call centers. For those veterans who send VA a written communication in which they indicate their intention to file a claim, VA will treat that written communication only as a request for a claims application. As a result, the earliest effective date for those claims would be the date they returned the properly completed VA form, not the date of their initial correspondence, as is done currently.

By contrast, a veteran who begins an electronically filed claim will have the date they initiate that electronic claim as the effective date. Similarly, a veteran who calls VA to indicate their intention to file a claim will have an "Intent to File a Claim" form filled out by a VA representative and filed to protect their effective date. Only written communications on non-standard forms are penalized by potential reduction of accrued benefits.

H.R. 245 would seek to remedy this situation by requiring that claimants who send written communications to VA indicating an intent to file a claim would be considered an informal claim and would have up to 180 days to complete the required form to protect their effective date. This legislation would restore most of the informal claims process as it exists today. However, currently a veteran has one year to formalize their claim, which is the same time period allowed under the new "Intent to File a Claim" procedure.

DAV and many other veterans service organizations and stakeholders expressed serious concerns during the comment period on the new rule when it was first proposed. We noted during the comment period that a penalty was being imposed upon those that attempted to make their filings through written communications not on standard forms. We understand and recognize the need for standardization; however, VA's March 2015 rules go too far and are too stringent. By not offering some measure of protection for those claimants that are either unaware of VA's filing requirements, or fail to meet VA's standards for other reasons, which could include severe disability, age, or lack of resources, VA would not be treating all veterans equitably.

DAV supports the purpose of this provision, to protect the rights of veterans; however, we strongly recommend that the informal claim period be restored to a full year, same as the new "Intent to File a Claim" procedure. Such a change would ensure that veterans who file claims in different manners are treated equitably.

The bill's second provision would also require the Secretary to identify, address and adjudicate reasonably raised claims that are placed at issue in the course of addressing or adjudicating any claim, including evidence relating to entirely separate conditions never identified as part of a formal claim. This provision addresses another part of the new rule set to take effect in March that would change current rules requiring VA to treat examination reports indicating a disability or worsening disability as an informal claim for such conditions, thereby triggering VA's duty to assist the veterans in that claim. Further, H.R. 245 would clarify that VA must also perform a sympathetic reading of the claim to determine if there are any other conditions that are "reasonably raised" in the evidentiary record. DAV supports this provision.

H.R. 280

H.R. 280, introduced by Chairman Miller, would authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the VA. The bill amends title 38, United States Code, by adding a section that allows the Secretary to issue and order directing an employee to repay the amount, or a portion of the amount, of any award or bonus paid to an employee. Prior to repayment, the employee would be afforded notice and an opportunity for a hearing conducted by the Secretary; however, the decision by the Secretary would be final and not reviewable by any other agency or court.

DAV has no resolution from our membership concerning this issue; thus, we take no formal position on this matter.

H.R. 294

This measure would provide severely ill or injured veterans, who are no longer able to care for themselves in their own homes, a more intimate, homelike alternative to nursing home care. Established in 2000, VA's Medical Foster Home (MFH) program offers 24-hour care to

such veterans in single-family residences. MFHs are limited to no more than three eligible¹ veteran residents each; caregiver support is provided by the MFH attendant; and, health care supervision is provided through VA's Home-Based Primary Care program or VA spinal cord injury home care program.

Patient participation in the MFH program is voluntary and veteran residents report very high satisfaction ratings. In 2013, the administrative costs for VA were less than \$10 per day, and the cost of Home Based Primary Care, medications and supplies averaged less than \$50 per day. However, veterans who qualify for nursing home care fully paid for by the government,^{2,3} must pay the full cost out of their own pocket to live in a MFH. Veterans who are unable to pay approximately \$1,500 to \$4,000 per month to MFH are not able to avail themselves of this benefit, so many are placed in nursing homes at much greater cost to VA. This measure would address this inequity by giving VA a three-year authority to pay for veterans, who would qualify for VA-paid nursing home care placement, to reside in a VA-approved MFH.

Despite the laudable aim of and our strong support for this measure, we do not believe its goal will be successfully achieved unless Congress alters VA's authority to use "provider agreements" to support MFH placements under this bill. Since VA is not able to use provider agreements to pay for MFH care according to this legislation, the alternative is to use contract vehicles. Because of burdensome reporting and auditing requirements inherent in federal contracting, we believe MFH providers, most of whom are single-home operators using basic business tools, would not be willing or capable of entering into complex contracts with VA.

The longer Congress takes to reform VA's provider agreement authority, the less access and choice severely ill and injured veterans will have to an array of non-VA home- and community-based service providers such as MFHs that cost less to the taxpayer than expensive nursing home care placements. We urge the Subcommittee to pass this legislation and reform VA's provider agreement authority.

¹ (1) The veteran is unable to live independently safely or is in need of nursing home level care; (2) The veteran must be enrolled in, or agree to be enrolled in, either a VA Home Based Primary Care or VA Spinal Cord Injury Home care program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home; and (3) The medical foster home has been approved in accordance with 38 C.F.R. § 17.73(d).

² VA's policy on nursing home eligibility required that VISNs provide nursing home care to veterans with 60 percent service-connected disability ratings who are also classified as unemployable or permanent and total disabled.

³ P.L. 106-117, 113 Stat. 1545 (1999) required that through December 31, 2003, VA provide nursing home care to those veterans with a service-connected disability rated at 70 percent or greater, those requiring nursing home care because of a condition related to their military service who do not have a service-connected disability rating of 70 percent or greater, and those who were admitted to VA nursing homes on or before the effective date of the act. Subsequent law extended these provisions.